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October 19, 2004

Director and Chief Judge Peter J. Calderone  
State of New Jersey  
Department of Labor  
PO Box 110  
Trenton, NJ 08625-0381

Dear Director and Chief Judge Calderone:

On behalf of the Lien Task Force organized under your direction I hereby submit our final report together with "Suggested Guidelines to Assist Those Handling MSPS-Related Cases Filed in the NJ Division of Workers' Compensation" with attached Flow Chart.

I was honored to serve as the Task Force Chairman and I cannot more highly commend the members of the committee for their diligence, insight and advice enabling the Task Force to consider the concerns of the Bench, both factions of the Bar and the Division. Supervising Judge Friedman and Judge Dietrich effectively represented the concerns of the Judges and the Division.

I would be remiss if I did not express my sincere gratitude to Tom Daly for his invaluable administrative, research and writing support as well as for his dedication and diligence. It was he who devised the Flow Chart which is to be utilized in conjunction with the "Suggested Guidelines".

I am hopeful that our report meets your expectations and I thank you for the honor of having served as Chairman of this important Task Force.

Respectfully yours,

  
Mark E. Litowitz

MEL/mcc  
cc: Task Force Members



**NJ Department of Labor and Workforce Development  
Division of Workers' Compensation  
Lien Task Force**

**FINAL REPORT**

Submitted October 19, 2004

Honorable Mark E. Litowitz  
Former Director and Chief Judge of  
Workers' Compensation  
Task Force Chairman

**NJ Department of Labor and Workforce Development  
Division of Workers' Compensation  
Lien Task Force**

**LIST OF MEMBERS**

|                                |  |
|--------------------------------|--|
| <b>Mark E. Litowitz</b>        | Former Director/Chief Judge of Workers' Compensation,<br>Task Force Chairman |
| <b>Joshua Friedman</b>         | Supervising Judge of Compensation  |
| <b>Virginia M. Dietrich</b>    | Judge of Compensation  |
| <b>Steven Antonelli, Esq.</b>  | Daniel & Dochney   |
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| <b>Samuel M. Gaylord, Esq.</b> | Gaylord & Yuska  |
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| <b>Paul A. Schwartz, Esq.</b>  | Goldstein Ballen O'Rourke & Wildstein  |
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| <b>Thomas W. Daly, Esq.</b> | NJ Department of Labor and Workforce Development<br>(Administrative, Research & Writing Support) |
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## **FINAL REPORT OF THE LIEN TASK FORCE**

The Director and Chief Judge of Workers' Compensation, Peter J. Calderone, established the Lien Task Force to: (1) consider major issues arising from liens and rights of reimbursement impacting cases filed with the New Jersey Division of Workers' Compensation; (2) promulgate recommendations for resolution of those issues; and (3) help develop a higher degree of uniformity in how such issues are addressed throughout the Division.

At the outset, all of the major types of liens and rights of reimbursement were considered and discussed (i.e., Medicare rights of reimbursement, Medicaid liens, TDB liens, child support liens, PIP carrier liens, Section 40 liens, and medical provider liens). However, it quickly became clear that the most critical and urgent problem facing the Division arose from Medicare's right of reimbursement.

Since CMS (Centers for Medicare and Medicaid Services) began its recent nationwide effort to recover expenditures made by Medicare on behalf of injured employees who have filed workers' compensation claims, Medicare-related cases have created what has been termed a "crisis", "stand still", or "logjam" within the New Jersey Division of Workers' Compensation. At this time, the resolution of hundreds of cases has been severely delayed, with such delay exerting a detrimental impact upon almost all parties involved in these cases. With this urgent problem in mind, the Lien Task Force decided to concentrate its efforts, discussions and recommendations almost exclusively upon finding ways to resolve at least some of the problems created by this backlog of Medicare-related cases awaiting resolution in the Division.

With this objective in mind, members of the Lien Task Force engaged in a number of efforts to more fully understand the Medicare Secondary Payer Statute (MSPS) and its impact on New Jersey workers' compensation cases: conducting legal research, inviting subject matter experts to join Task Force meetings, engaging in conference calls with representatives of CMS/Medicare, attending CMS/Medicare seminars, and designing flowcharts to help clarify how attorneys can comply with CMS/Medicare requirements when handling NJ workers' compensation cases. A great deal of information was obtained, considered and discussed at length.

The prime result of these Task Force efforts are contained in the attached "Suggested Guidelines to Assist Those Handling MSPS-Related Cases Filed in the NJ Division of Workers' Compensation". When reading these guidelines, one should keep in mind that they are intended to be only advisory in nature and are not intended to be viewed as having the legal force or authority of regulations promulgated by the Division.

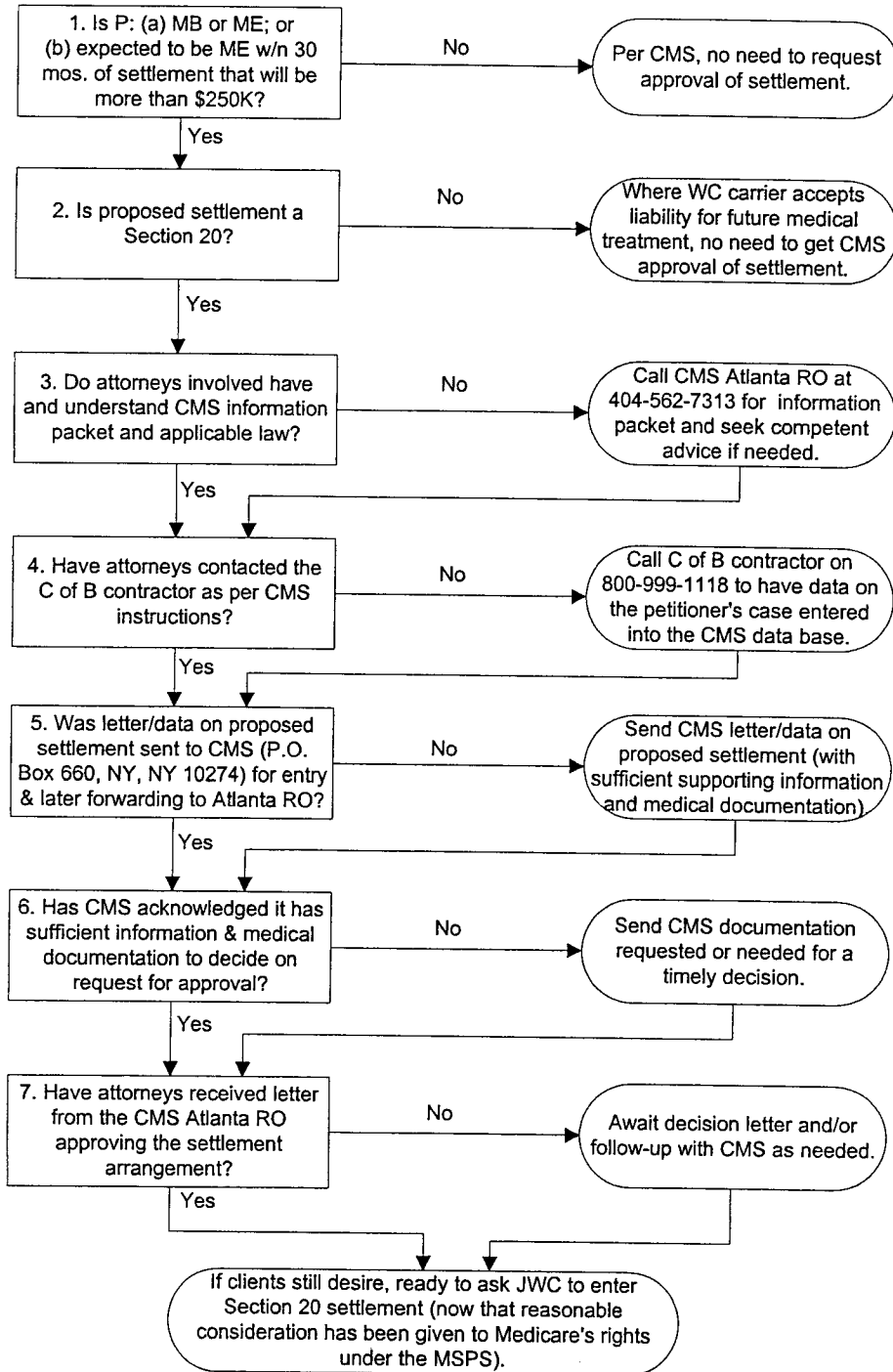
## **SUGGESTED GUIDELINES TO ASSIST THOSE HANDLING MSPS-RELATED CASES FILED IN THE NJ DIVISION OF WORKERS' COMPENSATION**

The following steps are proposed as suggestions for more effectively and efficiently handling New Jersey workers' compensation cases that are affected by the Medicare Secondary Payer Statute (MSPS):

1. As early as practicable, the petitioner's attorney should identify the petitioner as a Medicare beneficiary or a Medicare eligible person (e.g., where petitioner has received SSDI for more than two years). The petitioner's attorney must also take responsibility for obtaining information as needed from the Coordination of Benefits Contractor (COBC) and/or CMS regional office.
2. As soon as practicable, the Judge of Compensation should require a meaningful pre-trial conference that focuses on identifying all MSPS-related issues and establishing the responsibility for dealing with them. The petitioner's attorney should provide the Court with all significant Medicare-related information known about the petitioner (e.g., date awarded SSDI, date of Medicare eligibility, and dates the petitioner received or will receive Medicare benefits).
3. When the case is next listed and heard, a meaningful pre-trial conference should take place during which the parties:
  - a. Identify all issues, especially MSPS issues that still must be resolved;
  - b. Refer to the flowchart adopted by the Division as an aid for proceeding in MSPS cases;
  - c. Develop and agree upon an action plan for resolving the remaining issues; and
  - d. If the Judge and parties believe that the case may most appropriately be resolved via a Section 20 settlement or an Order Approving Settlement (OAS) where an alleged injury or occupational disease is going to be ruled out as part of the settlement, conclude the pre-trial conference with a clear understanding of who will carry out the action plan and provide CMS with the supporting documentation it requires.
4. All parties then will need to cooperate to ensure that CMS is provided with all of the required documentation it needs to reach its decisions and respond to the parties as quickly as possible.
5. At this juncture, the Court should adjourn the case for a period of time sufficient for allowing the parties to obtain a response from CMS. Failure to receive a response from CMS may be deemed a valid basis for granting a further adjournment.
6. After a response from CMS is received, the attorney shall notify the Court and a subsequent pre-trial conference should be held pursuant to paragraph 3.

7. Disposition of these cases should be viewed as a high priority. When agreed to by the parties, a trial on reports should be considered as an expeditious way of resolving issues that could not be resolved.
8. Ultimately, the case may then be resolved by settlement, trial on reports, or a fully litigated trial.

**An aid for NJ WC attorneys  
handling Medicare Secondary  
Payer Statute (MSPS) cases\***



MB = Medicare  
Beneficiary

ME = Medicare  
Eligible

CMS = Center for  
Medicare and Medicaid  
Services

RO = Regional  
Office

C of B = Coordination  
of Benefits

**\* This chart is only an aid or checklist that may be useful in simple Section 20 cases. One must keep in mind that MSPS issues could also arise in more complex cases for which this chart may not be as helpful (e.g., a case that involves the Second Injury Fund and closes rights to future medical treatment ).**